

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|------------------------|---|----------------------------|
| Frank Stephon Johnson, |) | |
| |) | |
| Plaintiff, |) | C.A. No. 0:18-0996-HMH-PJG |
| |) | |
| vs. |) | OPINION & ORDER |
| |) | |
| Officer Roach, |) | |
| |) | |
| Defendant. |) | |

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Paige J. Gossett, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ Frank Stephon Johnson (“Johnson”), a state pretrial detainee, proceeding pro se, alleges violations of 42 U.S.C. § 1983. In her Report and Recommendation issued December 28, 2018, Magistrate Judge Gossett recommends that Defendant Roach be dismissed. (R&R 8, ECF No. 58.)

After the Report and Recommendation was issued, Johnson filed a motion to amend or correct the second amended complaint and a motion to appoint counsel. (Mot. Am., ECF No. 61; Mot. Appoint Counsel, ECF No. 62.) Out of an abundance of caution, the court construes these documents as objections. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party’s right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). Upon review, the court finds that Johnson's objections are non-specific, unrelated to the dispositive portions of the Report and Recommendation, or merely restate his claims.

Accordingly, after review, the court finds that Johnson's objections are without merit.

As to the motion to amend, Johnson previously amended his complaint twice and has filed five motions to amend throughout the pendency of this action. (Am. Compl., ECF No. 20; Second Am. Compl., ECF No. 28; Mot. Am., ECF Nos. 10, 14, 25, 40, 49.) Thus, Johnson has had multiple opportunities to amend his complaint and cure the deficiencies therein. See Foman v. Davis, 371 U.S. 178, 182 (1962) (holding that a motion to amend may be denied for "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment"). Further, Johnson has provided no basis under Rule 15 of the Federal Rules of Civil Procedure to amend his second amended complaint. Johnson's motion to amend contains generalized grievances against the staff at Allen S. Glenn Detention Center and does not contain any additional information pertaining to Defendant Roach or Johnson's slip and fall incident, which is the subject of the instant action. Accordingly, Johnson's motion to amend or correct is denied for "repeated failure to cure deficiencies by amendments previously allowed." See id.

Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Gossett's Report and Recommendation and incorporates it herein.

Therefore, it is

ORDERED that Officer Roach is dismissed. It is further

ORDERED that Johnson's motion to amend, docket number 61, is denied. It is further

ORDERED that Johnson's motion to appoint counsel, docket number 62, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
January 24, 2019

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.